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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,411	09/01/2004	Emmanouil Domazakis	CFAV-4	8455
52450	7590	07/12/2007		
KRIEG DEVAULT LLP ONE INDIANA SQUARE SUITE 2800 INDIANAPOLIS, IN 46204-2079			EXAMINER CHAWLA, JYOTI	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 07/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/506,411	Applicant(s) DOMAZAKIS, EMMANOUIL	
	Examiner Jyoti Chawla	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/1/2004</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed September 1, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if

the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
 - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
 - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are

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solved by the applicant's invention. This item may also be titled "Background Art."

- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if

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an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).

- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

Claim Objections

Claim 7-12 are objected to because of the following informalities: The claim as recited includes the term "which is characterized by" in lines 1 and 2 of the claim. Applicant is suggested to change the phraseology to a more accepted US term, such as "wherein" to clarify the meaning of the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 (refer to step c) recites "with simultaneous vacuum application for 3 min until the resulting product temperature rises up to 4°C". However, the temperature of the product before commencement of step c is not stated (the temperature of the meat and H₂O is stated but temperature of other ingredients or overall temperature of the mix is not defined). Therefore, it may not be possible to simultaneously satisfy the limitations of "continuing mixing with simultaneous vacuum application for 3 min" (emphasis added) and that "the resulting product temperature rises up to 4°C".

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Claim 7 also recites "with total heat treatment time during pasteurization depending upon the diameter of the resulting product", but does not define any specific relationship between the "diameter" and the "total heat treatment time". Therefore, it is not possible for one of ordinary skill in the art to determine what this dependence is. As such, the phrase "with total heat treatment time during pasteurization depending upon the diameter of the resulting product" will not be considered for this office action, and only the stated time; i.e. "varying between 1 and 3 hours" will be considered.

Claim 11 (refer to step b) also recites "with simultaneous vacuum application for 3 minutes until the resulting product temperature rises up to 4°C". However, the temperature of the product before commencement of step b is not stated (the temperature of meat and H₂O is stated but temperature of other ingredients or overall temperature of the mix is not defined). Therefore, as also explained for claim 7, it may not be possible to simultaneously satisfy the limitations of "continuing mixing with simultaneous vacuum application for 3 minutes" (emphasis added) and that time is also determined to satisfy "until the resulting product temperature rises up to 4°C".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Determining the scope and contents of the prior art.
Ascertaining the differences between the prior art and the claims at issue.
Resolving the level of ordinary skill in the pertinent art.

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Considering objective evidence present in the application indicating obviousness or nonobviousness.

(A) Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (WO 02/065860)

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Domazakis teaches of a method for preparing meat-based products, which is characterized by the incorporation of olive oil instead of animal fat, and the addition of milk protein (cheese), comprising the following steps:

- (a) Mixing fat-free meat at a temperature of 0 °C. with water at a temperature of -2°C to 2°C, salt, preservatives and auxiliary salts (Page3, lines 24-26);
- (b) Adding olive oil (Page3, lines 28);
- (c) Continuing mixing with simultaneous vacuum application for 3 minutes until the resulting product temperature rises up to 4°C (Page3, lines 29-31);
- (d) Adding milk protein (i.e., cheese) and continuing vacuum mixing until the feta cheese is totally dispersed throughout the resulting product (Page3, lines 26-36);
- (e) Conveying the resulting product to a filling machine, where it is stored, with a simultaneous vacuum application at 1000 mbar and then pasteurization at 71°C. with total heat treatment time during pasteurization depending upon the diameter of the resulting product and varying between 1 and 3 hours (Page 3, lines 31-36); and
- (f) Moving the resulting product into a freezer unit at a maximum temperature of 2°C (Page3, lines 35-36).

The reference teaches of the process of making the meat based product as instantly claimed. However the reference does not teach of feta cheese or cheese in the invention as taught by Domazakis. However addition of cheese to meat was known at

the time of the invention (e.g., Bratwurst Links with cheddar). Feta cheese was also known in the art at the time of the invention. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Domazakis and add cheese as the protein source in the meat product as taught. One would have been further motivated to add different types of cheese to the meat and olive oil composition taught by Domazakis in order to line of products that differ in flavors based on the source of cheese and meat used that can be made with the same equipment. One would have been further motivated to do so in order to provide a variety of taste and flavor to the intended consumer.

Regarding claim 8 and 9, the reference teaches of addition of both milk protein (i.e., cheese) and olive oil. However the reference does not teach of the amounts in which each of the ingredients could be incorporated in the final meat, cheese and olive oil product. However, cheese is added to the meat based product to make the meat and oil emulsion more creamy and the relative amounts of each of the ingredients can be varied based on the optimal color, texture or flavor desired. Therefore one of ordinary skill in the art at the time of the invention would have been motivated to modify Domazakis in order to obtain products with varied relative amounts of meat, cheese and oil, based on the optimal flavor, color and texture desired. One would have been further motivated to do so in order to make more than one kind of product by using the same main ingredients, thus creating variety for the consumer.

Further, attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients,

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which produces a new, unexpected and useful function. In re Benjamin D. White, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

Regarding claim 10, Domazakis teaches meat -based products characterized by the addition of olive oil and cheese and are prepared by the method as instantly claimed.

Regarding claim 11, see the rejection of claim 7. Claim 11 differs from claim 7 in the step of addition of olive oil, however, since the method as instantly claimed is a method comprising the steps, thus the reference still teaches of the process as recited in claim 11.

Regarding claim 12, Domazakis teaches meat -based products characterized by the addition of olive oil and milk protein (i.e., cheese) and are prepared by the method as instantly claimed.

B) Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens et al (GB1108994) in view of the combination of Christiensen et al (US 5654028) and Farkye et al (US 5766657).

Stevens teaches a method of making the alimentary composition where the natural edible material of animal or vegetable origin is used. The alimentary material (meat {chicken meat Page 2, Example 1} or vegetables or both) is in a finely divided state or is minced (Page 1, lines 60-80) as instantly claimed. The material is salted and olive oil is added to the mixture either before or after the alimentary material is cooked (page 1, lines 80-86). The composition is homogenized (mixer homogenizer, Page 2, line 63) after the addition of olive oil and sterilized (Page 2, lines 1-75)

Therefore the process of making mixed alimentary compositions where olive oil is added to lean meat and then the mixture is homogenized was known at the time of the invention as taught by Stevens et al.

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Stevens however, is silent as to the temperatures of processing and the addition of cheese or milk based protein composition. Christensen teaches of a comminuted lean meat composition by the process where the comminuted meat is mixed with an emulsion of water and oil along with other ingredients as salt and other fat replacers. The ingredients are mixed and ground if required to reach the final largest particle diameter of 5mm. The high speed grinder is used for mixing. Addition of 1-15% of other ingredients. The resulting mixture is distributed to form suitable sized packagings (e.g., sausage shape) and preservation and /or cooking treatment either before or after packaging (Column 20, line 10 to Column 22, line 5). Regarding the processing temperatures, Christensen teaches of processing meat products at various temperatures and also teaches freezing at temperatures below 0°C as is instantly claimed (Examples 1-21, specially Example 19, Column 50, lines 53-55). Christensen teaches of making sausages and other meat based products by the process outlined in columns 21-24.(Column 25, lines 1-11). Christensen teaches of addition of ice water to the comminuted meat to make an emulsion, i.e., temperature in the range of 0° C (Column 30, Example 1, Lines 25-65). The reference further teaches of the addition of skimmed milk powder, (i.e., milk protein based compound), seasoning and salt. The ice water is added at two steps to keep the emulsion at a lower temperature. The reference also teaches of vacuum mixing (Column 26, lines 1-5) and then a preservation or cooking treatment (Column 21, line 65 to Column 26, line3). Therefore the reference teaches of the process steps recited in the claims 7 and 11. Thus the process of making meat based combination foods with olive oil and milk based product was known in the art at the time of the invention (Stevens and Christiansen). The process steps as recited in claims 7 and 11 were also known in the art of meat based product making. Meat and cheese products were also known in the art at the time of the invention, e.g., cheddar Bratwurst. Therefore one of ordinary skill in the art at the time of the invention would have been motivated to modify the method taught by Stevens and include the low temperature processing steps as taught by Christensen and choose any variety of cheese as the milk protein source to make the emulsion in order to make a variety of meat and cheese products.

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However the reference does not teach of feta cheese or cheese in the invention as taught by Stevens. However addition of cheese to meat was known at the time of the invention (e.g., Bratwurst Links with cheddar). Feta cheese was also known in the art at the time of the invention. Farkye teaches of making melt control cheeses that can be cooked better without melting away. The reference teaches of making controlled melt cheeses like feta cheese (Column 2, lines 35-40) so that the cheese product obtained does not melt away and drip from the combination foods during the normal cooking and heating process (Column 1, lines 20-30). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Stevens and add cheese as the protein source in the meat product as taught. One would have been further motivated to add different types of cheese to the meat and olive oil composition taught by Stevens in order to produce a line of products that differ in flavors based on the source of cheese and meat used that can be made with the same equipment. One would have been further motivated to add controlled melt cheeses, such as the ones taught by Farkye so that the cheese does not melt prematurely during the heating/cooking process. One would have been motivated to choose and controlled melt cheese, such as, feta cheese in order to make a novelty product where the cheese does not have an overpowering flavor of its own (like sharp cheddar and Swiss cheeses). One would also have been motivated to add feta cheese for its characteristic whitish color, as it would provide a good contrast with the meat and the spices and provide a marbled look to the meat product thus giving it a pleasing visual quality.

Regarding claim 8, Stevens is silent as to the olive oil content of the meat product, however Christensen teaches that the fat content of the finished meat based product is less than 10% (Column 22, lines 1-5). Regarding the added edible oils Christensen teaches of using oils and specifically olive oil (Column 28, lines 15-16) where the amount of edible oil should be under 5% (Column 28, lines 1-22) which falls in the range recited by the applicant in claim 8.

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Regarding claim 9 Christiensen teaches the addition of protein in the composition (Column 4, lines 53-55) and 1-15% of other ingredients (further ingredients) or meat extenders which can be cooked or uncooked vegetables, water binding agents, structuring agents, preservatives, flavoring agents, spices, meat extenders, flavor enhancing agents, sweetening agents, coloring agents, vitamins, smoke, and curing agents, whereby a meat product mixture results in which the proportion of additional ingredients is in the range of 1-15% by weight, preferably 2-12% by weight, in particular 4-10% by weight. (Column 23, line 65 to Column 24, line 30). The reference also teaches of preservative cultures of bacteria that produce lactic acid or acetic acid. Cheese or milk products act as meat extenders, structuring agents, flavoring agents, coloring agent based on the variety used and also help in preservation due to the bacterial cultures present in the cheese, thus it would be obvious to one of ordinary skill in the art at the time of the invention to modify Christiansen and add cheese to the meat based composition. One would have been motivated to do so in order to add a product that is known for its good taste and nutritional value while extending the meat product. Choice of any kind of cheese would have been a matter of choice for one of ordinary skill in the art at the time of the invention based on the final taste, flavor and texture of the meat product desired.

Thus meat products containing milk based protein and olive oil were known in the art at the time of the invention, where the proteins or other components and olive oil added to the meat product is in the range recited by the applicant. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Stevens and add milk protein based compound like cheese and olive oil in the range taught by Christiensen at least in order to make lower fat meat based product, which is also the intent of the applicant.

Regarding claims 10 and 12, Stevens in view of the combination of Christensen and Farkye teach the meat based products that are made by the instantly claimed method.

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Thus the combination of references teach of the products made by the method as recited in claims 10 and 12.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

I) Claim 7-12 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6-12 of copending Application No.10/506,417. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the applications are claiming the same method steps in the method of making a meat, feta cheese and olive oil based minced food product that can be extruded to form sausages.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

II) Claims 7-12 rejected on the ground of nonstatutory double patenting over claims 1-2 of U. S. Patent No. 7026007 B2 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: The current application claims a method of making meat cheese and olive oil based food product and patent 7026007 B2 claims of the same method but in place of cheese the method claims milk protein component which includes cheese.

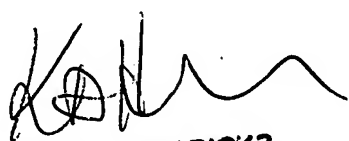
Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



KEITH HENDRICKS
PRIMARY EXAMINER

Jyoti Chawla
Examiner
Art Unit 1761